

FILED

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JAMES H. BROWNING, Clerk

SUPREME COURT

Supreme Court of the United States

OCTOBER TERM, 1961

No. 204

HALLIBURTON OIL WELL CEMENTING COMPANY,
Appellant

v.

JAMES S. REILY, COLLECTOR OF REVENUE,
STATE OF LOUISIANA (Since Succeeded By
Robert L. Roland, Who Was Duly Succeeded
by Roland Coereham),

Appellee

**ON APPEAL FROM THE SUPREME COURT
OF THE
STATE OF LOUISIANA**

**BRIEF OF
CHICAGO BRIDGE & IRON COMPANY,
AS AMICUS CURIAE,
IN SUPPORT OF THE
JURISDICTIONAL STATEMENT**

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& WENTZ

August 15, 1961

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 264

HALLIBURTON OIL WELL CEMENTING COMPANY,
Appellant

v.

JAMES S. REILY, COLLECTOR OF REVENUE,
STATE OF LOUISIANA (Since Succeeded by
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THE ISSUE

This brief is limited to the single issue which the appellant designates as the "Labor and Shop-Overhead Phase" of this case.

With respect to articles manufactured by appellant in Oklahoma, the Supreme Court of Louisiana has held the

Louisiana Sales Tax Law to impose a use tax which is admittedly greater than the tax which would have been imposed by such Law with respect to such articles if they had been manufactured by appellant in Louisiana. In so holding, the Supreme Court of Louisiana has rejected appellant's contention that the Louisiana Sales Tax Law, so construed, is invalid because it constitutes an unconstitutional discrimination against interstate commerce, in violation of the Interstate Commerce Clause (Article I, Sec. 8, Clause 3) and the Fourteenth Amendment of the Constitution of the United States.

The Interest of Chicago Bridge & Iron Company in This Issue

Appellant Halliburton Oil Well Cementing Company fabricates in its shops in Oklahoma truck-borne equipment which it uses in Louisiana but does not sell.¹ Chicago Bridge & Iron Company (herein called "Chicago Bridge") fabricates in its shops in Alabama and Illinois steel plates and other parts for oil storage tanks and other large structures which it uses in the erection of those structures in Louisiana but does not sell.²

Halliburton paid use taxes upon the cost of the materials which it had incorporated in equipment used in Louisiana,

1 Jurisdictional Statement, page 9.

2 Chicago Bridge as a contractor is a user rather than a seller of these materials, in accordance with the provision of Article 2-47 of the Louisiana Sales and Use Tax Regulations that "contractors engaged in constructing or improving real property, whether on a lump-sum or a cost-plus basis, are deemed to be purchasers and consumers of the materials used by them." See Commerce Clearing House Louisiana Tax Reporter, Paragraph 60-207.

but Appellee demanded and Halliburton paid under protest additional use taxes upon the labor and shop overhead of Halliburton attributable to fabricating this equipment outside of Louisiana.³ Similarly, Chicago Bridge has paid use taxes upon the cost of materials purchased by it outside of Louisiana, and Appellee has given notice that he proposes to assess additional use taxes upon the costs incurred by Chicago Bridge in fabricating these materials outside of Louisiana. Chicago Bridge has filed a protest against the proposed assessment, and assessment has been withheld by agreement pending final disposition of this case, although Appellee has not committed himself to abide by the result of this case.

The Appellee has stipulated in this proceeding, and it is equally true with respect to Chicago Bridge & Iron Company, that if the taxpayer had purchased its materials, operated its shops and incurred its fabricating expenses in Louisiana, "there would have been a sales tax due to the State of Louisiana upon the cost of the materials purchased in Louisiana and a Use Tax on materials purchased outside of Louisiana; but there would have been no Louisiana sales tax or use tax due upon the Labor and Shop Overhead."⁴

The Importance of the Issue

The amount of additional use taxes which the Appellee proposes to assess upon fabricating costs incurred outside of Louisiana by Chicago Bridge between December 1, 1955 and June 30, 1959, is \$61,726.41. If Appellee's position

³ Jurisdictional Statement, pages 9 and 10; see also page 51 (opinion of Supreme Court of Louisiana, 241 La. 67, 127 So. 502, 504).

⁴ Stipulation, par. IV, Record, p. 58, quoted on page 10 of Jurisdictional Statement.

is correct, additional use taxes amounting to approximately \$21,500.00 accrued in the period from July 1, 1959 through June 30, 1961, and such taxes continue to accrue.

If Louisiana can tax Chicago Bridge on the cost of fabricating materials outside of the State, without taxing the cost of similar fabrication done in Louisiana, then other states can do likewise. The resulting costs to Chicago Bridge would be very substantial and in those states in which Chicago Bridge has no fabricating shops it would be placed at severe competitive disadvantage with respect to local businesses, which would pay no tax on fabricating costs.

ARGUMENT

It is stipulated that Louisiana seeks to treat Halliburton and others similarly situated differently than it treats local concerns who do the same things.⁵ The Supreme Court of Louisiana says that this difference does not amount to discrimination because "the proper comparison would be between the use tax on the assembled equipment and a sales tax on the same equipment if it were sold."⁶ On the contrary, the comparison suggested by the court is wholly improper. The assembled equipment was, in fact, *not* sold by Halliburton. The absence of discrimination against Halliburton vis-a-vis local competitors who *sell* assembled equipment is immaterial. The damaging discrimination exists with respect to local competitors who, like Halliburton, do *not* sell, but who, unlike Halliburton, fabricate in Louisiana. The cases that uphold non-discriminatory taxation of interstate commerce do not determine the presence or absence of discrimination by comparing the treatment of wholly unlike transactions. On the contrary, their plain teaching is that the determination must be made by comparing the taxation of an interstate transaction with the taxation of an identical transaction carried out entirely within the taxing state. If a State wishes to tax "the stranger from afar" in respect of what he does outside of the State, it must collect no greater toll from him than it collects from one of its own citizens who does the same

5 *Ibid.*

6 Jurisdictional Statement, page 64 (opinion of the Supreme Court of Louisiana, 241 La. 67, 127 So. 2d 502, 510).

things within its borders.⁷ This standard of equality Louisiana has stipulated that it does not meet.

Use taxes with respect to articles moving in interstate commerce have been sustained as complements to sales taxes that do not. The two taxes can be complementary only if the tax imposed upon the use of goods bought at a given price outside of the taxing State is the same as that imposed upon the sale or purchase of identically priced goods within that state.⁷ Their complementary character will be lost if one tax is based in part upon values added to goods by the purchaser thereof after his purchase while the other tax is computed without reference to such values. Use taxes fall upon articles moving into the taxing state in interstate commerce and they have been held non-discriminatory only where they are balanced by sales taxes on articles acquired locally — in instances where, in the language of Justice Cardozo, “the sum is the same when the reckoning is closed.”⁸

In the instant case the sum is *not* the same when the reckoning is closed. Halliburton's competitors who fabricate the equipment involved in Louisiana pay a tax only on the price paid by them for component parts of that equipment. Halliburton pays an additional tax on the cost attributable to fabrication and assembly — an additional tax which is directly attributable to and measured by activity occurring outside the jurisdiction of Louisiana.

7 See *Henneford et al. v. Silas Mason Co., Inc., et al.* (1937), 300 U.S. 577, 584, 57 Sup. Ct. 524, 527, 81 L. ed. 814, 819, and the cases cited in Mr. Justice Cardozo's opinion in that case.

8 *Henneford et al. v. Silas Mason Co., Inc. et al., supra*, footnote 7, at p. 584.

CONCLUSION

We believe that a substantial federal question of great moment to large numbers of taxpayers has been decided erroneously by the Supreme Court of Louisiana and, accordingly, we ~~use~~ this Court to retain jurisdiction of Halliburton's appeal and to reverse the judgment from which that appeal has been taken.

Respectfully submitted,

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August 15, 1961

PROOF OF SERVICE

I, ALBERT L. HOPKINS, one of the attorneys for Chicago Bridge & Iron Company, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing Brief of Chicago Bridge & Iron Company, as Amicus Curiae, In Support of the Jurisdictional Statement, upon the several parties to this appeal as follows:

(1) On Roland Coereham, Collector of Revenue of the State of Louisiana (and successor in office to James S. Reily and Robert L. Roland, earlier parties hereto), Appellee in this proceeding, by mailing on August 15, 1961 a typewritten copy in a duly addressed envelope, with air mail postage prepaid, and by mailing subsequently, on August 17, 1961, a printed copy in a duly addressed envelope with air mail and registered mail postage prepaid, to his counsel of record, Chapman L. Sanford, at the Capitol Annex Building, Baton Rouge, Louisiana.

(2) On Halliburton Oil Well Cementing Company, Appellant in this proceeding, by mailing on August 15, 1961 a typewritten copy in a duly addressed envelope, with air mail postage prepaid, and by mailing subsequently, on August 17, 1961, a printed copy in a duly addressed envelope with air mail and registered mail postage prepaid, to its counsel of record, Benjamin B. Taylor, Jr., at 1100 Louisiana National Bank Building, Baton Rouge, Louisiana.

(3) On Thomas Jordan, Inc., amicus curiae in this proceeding, by mailing on August 17, 1961 a printed copy in a duly addressed envelope, with air mail and registered mail postage prepaid, to its attorney of

record, Charles D. Marshall, at 1122 Whitney Building,
New Orleans, Louisiana.

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